

A Lifeline Ambulance Sdn Bhd v AMAssurance Bhd (formerly known as Arab-Malaysian Assurance Bhd)

B HIGH COURT (KUALA LUMPUR) — SUIT NO D8–22–1311 OF 2002
KANG HWEE GEE J
1 DECEMBER 2009

C *Insurance — Motor insurance — Policy of insurance — Claims — Total loss of vehicle — Allegation of willful delay by insurer to settle insurance claim — Whether insured may claim consequential losses due to delay in settling claim — Whether delay of eight months in settling claim contumelious — Consequential losses excluded by insurance policy*

D The plaintiff's claim arose from a commercial vehicle policy ('the policy') issued by the defendant in respect of a vehicle BEU 6673 belonging to the plaintiff ('the insured vehicle'). The insured value was RM55,000. Following a road accident on 5 January 2000 which resulted in the total loss of vehicle,

E the plaintiff submitted a claim on the policy on 24 February 2000. The defendant offered to pay the plaintiff RM50,000 in March 2000. The plaintiff rejected the offer. On 21 August 2000 the defendant made a second offer for RM52,500 which the plaintiff also rejected. The defendant then made a third offer on 13 October 2000 for the full insured sum of

F RM55,000. This offer too was rejected by the plaintiff on the grounds that the defendant's wilful delay had caused loss to the plaintiff. The plaintiff then filed this suit on 21 August 2002 claiming the insured amount together with a loss of earning of RM40,000 as at 18 July 2000 and RM17,000 per month from August 2000 onwards.

G **Held**, dismissing the plaintiff's claim with costs:

- H** (1) The plaintiff's claim with respect to the liability of the defendant to pay the insured sum of RM55,000 was a non-issue as the defendant was prepared to pay this sum. The plaintiff was therefore entitled to claim this sum (see para 9).
- I** (2) With respect to any claim arising out of the use of the insured vehicle, the defendant was only liable to indemnify the plaintiff under section 1 para 1 of the policy. The policy is essentially a contract of indemnity which binds the defendant insurance company to indemnify the plaintiff for loss occasioned and incurred by the plaintiff only within the provision of section 1 para 1. Nothing therefore could flow from the consequence of any contumelious delay on the part of the defendant to settle the plaintiff's claim. The 'Exceptions to section 1' cl (i) of the

policy expressly stated that the company shall not be liable to pay for any consequential loss (see paras 10–11).

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- (3) In any case the time period of some eight months expended by the defendant before offering to settle the full sum was not contumelious — given the fact that the plaintiff's claim in the normal course would have to be adjusted in order to determine the sum that ought to be paid to the plaintiff. Thus, the plaintiff's claim for loss suffered in consequence of the late settlement was disallowed (see paras 11–12).

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[Bahasa Malaysia summary]

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Tuntutan plaintiff adalah berasaskan satu polisi kenderaan komersial ('polisi tersebut') yang dikeluarkan oleh defendan atas kenderaan BEU 6673 kepunyaan plaintiff ('kenderaan yang diinsuranskan'). Nilai yang diinsuranskan ialah RM55,000. Berikutan satu kemalangan jalan raya pada 5 Januari 2000 yang menyebabkan kenderaan tersebut langsung tidak dapat digunakan lagi, plaintiff menyerahkan satu tuntutan berlandaskan polisi tersebut pada 24 Februari 2000. Defendan menawarkan pembayaran sebanyak RM50,000 kepada plaintiff pada Mac 2000. Plaintiff menolak tawaran itu. Pada 21 Ogos 2000 defendan membuat tawaran kedua untuk RM52,500 yang juga ditolak oleh plaintiff. Defendan kemudiannya membuat tawaran ketiga pada 13 Oktober 2000 untuk jumlah penuh yang diinsuranskan iaitu RM55,000. Tawaran ini juga telah ditolak oleh plaintiff atas alasan kelewatan yang disengajakan oleh defendan telah menyebabkan kerugian kepada plaintiff. Plaintiff kemudian memfailkan guaman ini pada 21 Ogos 2002 menuntut amaun yang diinsuranskan bersama-sama dengan kehilangan mata pencarian sebanyak RM40,000 setakat 18 Julai 2000 dan RM17,000 setiap bulan bermula dari Ogos 2000.

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Diputuskan, menolak tuntutan plaintiff dengan kos:

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- (1) Tuntutan plaintiff berkenaan liabiliti defendan untuk membayar jumlah yang diinsuranskan sebanyak RM55,000 bukanlah satu isu kerana defendan bersedia untuk membayar jumlah ini. Plaintiff oleh itu berhak menuntut jumlah ini (lihat perenggan 9).
- (2) Berkenaan apa-apa tuntutan yang timbul daripada penggunaan kenderaan yang diinsuranskan, defendan hanya bertanggungjawab untuk menanggung kerugian plaintiff di bawah seksyen 1 perenggan 1 polisi tersebut. Polisi tersebut pada asasnya adalah satu kontrak tanggung rugi yang mengikat syarikat insurans defendan untuk menanggung kerugian plaintiff bagi kerugian yang disebabkan dan ditanggung oleh plaintiff seperti yang diperuntukkan dalam seksyen 1 perenggan 1. Lantaran itu tiada apa-apa yang boleh dituntut akibat kelewatan oleh defendan dalam menyelesaikan tuntutan plaintiff.

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- A ‘*Exception to Section 1*’ klausa (i) polisi tersebut menyatakan bahawa syarikat tidak bertanggungjawab untuk membayar apa-apa kerugian turutan (lihat perenggan 10–11).
- B (3) Walau bagaimanapun tempoh masa lebih kurang lapan bulan yang diambil oleh defendan sebelum membuat tawaran untuk menyelesaikan jumlah sepenuhnya tidaklah disengajakan berikutan fakta bahawa tuntutan plaintif dalam aliran biasa mesti dilaraskan bagi menentukan jumlah yang sepatutnya dibayar kepada plaintif. Maka, tuntutan plaintif untuk kerugian yang dialami akibat penyelesaian yang lewat tidak dibenarkan (lihat perenggan 11–12).]
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Notes

For cases on motor insurance generally, see 8(1) *Mallal’s Digest* (4th Ed, 2010 Reissue) paras 240–346.

- D *KH Lim (Lee & Lim) for the plaintiff.*
S Satharuban (S Murali with him) (Satha & Co) for the defendant.

Kang Hwee Gee J:

- E [1] This case was heard in full before the late Abdul Wahab Said Ahmad J. Later he allowed the plaintiff’s application to recall a defendant’s witness for further cross-examination and to introduce an additional witness to adduce further evidence. He passed away before the witnesses could be heard.
- F Subsequently both the witnesses were examined before me.
- G [2] The parties agreed that I should decide this case based on the evidence recorded by the late Abdul Wahab Said Ahmad J and further evidence adduced by the plaintiff before me. The plaintiff’s claim arose from a commercial vehicle policy (exh ‘P1’) issued by the defendant in respect of a vehicle BEU 6673 belonging to the plaintiff.
- H [3] The insured value is RM55,000 as stated in p 1 of the insurance cover note (exh ‘P1’).
- I [4] Following a road accident on 5 January 2000 which resulted in the total loss of vehicle the plaintiff submitted a claim on the policy on 24 February 2000. The defendant offered to pay the plaintiff RM50,000 in March 2000. The plaintiff rejected the offer. On 21 August 2000, the defendant made a second offer for RM52,500 which the plaintiff also rejected. The defendant then made a third offer on 13 October 2000 for the full insured sum of RM55,000 which was also rejected.

[5] The only reason why the plaintiff rejected this offer notwithstanding that it had been offered the full insured sum of RM55,000 was 'due to the wilful delay on the part of defendant company which causes loss to the plaintiff company.' The plaintiff wanted to claim losses arising out of the defendant's failure to settle the claim sooner (see Q&A 77 of the plaintiff's witness statement and defendant's letter dated 13 October 2000 p 21 of the agreed bundle B).

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[6] The plaintiff proceeded to file this suit on 21 August 2002 after the offer by the defendant to pay the full insured sum of RM55,000. It included in its statement of claim in para 10 an allegation that the defendant had wilfully and negligently delayed to pay the insured sum and thereby causing it to incur a loss of earning of RM40,000 as at 18 July 2000 and RM17,000 per month from August 2000 onwards. The defendant's defence is essentially that whatever claim that the plaintiff can make had to be determined under the policy of insurance. This is stated clearly in endorsement 99 at p 6 of the agreed bundle B which reads:

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Notwithstanding anything within mentioned to the contrary, it is hereby agreed that in the event of a total loss, whether actual or constructive to the vehicle insured herein, the liability of the company shall be the insured value or the market value of the vehicle whichever is lower subject to the reduction of any amount which the insured is required to bear under the policy.

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[7] The defendant had pursuant to this policy offered to pay the plaintiff the full insured sum of RM55,000 and the defendant made the offer as early as 13 October 2000 (eight months after the plaintiff made the claim) after several attempts to settle at a lower sum. Evidence was led by the defendant as to why there was a delay before the final sum was offered by the defendant's claim officer, DW2 Abdul Rahim Choo bin Abdullah who testified that before any offer was made the market value of the vehicle insured had to be ascertained. It was initially ascertained as RM46,000 and hence the first offer of RM50,000 was made. The offer was increased to RM52,500 after reviewing the adjuster's report and the final offer of RM55,000 was made purely on commercial consideration.

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[8] With respect to the claim of loss of earning this is clearly too remote to justify a claim in tort.

DECISION

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[9] It is clear that the plaintiff's claim with respect to the liability of the defendant to pay the insured sum of RM55,000 is a non-issue as by its letter dated 13 October 2000 the defendant had indicated in no uncertain terms

A that it was prepared to pay this sum. The sum of RM55,000 that the defendant was prepared to pay represents the full sum insured under the policy. This settlement sum was offered to the plaintiff even before it filed this action twenty two months later on 21 August 2002. The plaintiff should therefore be entitled to claim this sum.

B [10] With respect to the plaintiff's claim for loss of earning it is clear that any claim arising out of the use of the insured vehicle BEU 6673 the defendant would only be liable to indemnify the plaintiff under section 1 para 1 of the policy which states as follows:

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1. The Company will indemnify the Insured against loss of damage to the Motor Vehicle and its accessories and spare parts whilst thereon
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- (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear
 - (b) by fire external explosion self-ignition or lightning or burglary housebreaking or theft
 - (c) by malicious act
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- (d) whilst in transit (including the processes of loading and unloading incidental to such transit) by
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- (i) road rail inland waterway lift or elevator
 - (ii) direct sea route across the straits between the island of Penang and the mainland

G [11] It is clear that the policy is essentially a contract of indemnity which binds the defendant insurance company to indemnify the plaintiff for loss occasioned and incurred by the plaintiff only within the provision of section 1 para 1 above. Nothing therefore can flow from the consequence of any contumelious delay on the part of the defendant (even if proved) to settle the plaintiff's claim. In fact the '*Exceptions to Section 1*' cl (i) of the policy

H expressly states that the company shall not be liable to pay for any consequential loss. In any case the time period of some eight months expended by the defendant before offering to settle the full sum was not contumelious — given the fact that the plaintiff's claim in the normal course would have to be adjusted in order to determine the sum that ought to be

I paid to the plaintiff as explained by the defendant's claim officer Abdul Rahim Choo bin Abdullah (DW2).

[12] Accordingly the plaintiff's claim for loss suffered in consequence of the late settlement of its claim is disallowed.

[13] The plaintiff should however pay the cost of this action to the defendant to be taxed as it is clear that had it accepted the defendant's final offer to pay the full insured sum under the policy vide its letter dated 13 October 2000 it would not have been necessary for the plaintiff to file this action.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundrum

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